Supreme Court, U.S.
FILED

941283 JAN 17 1995

OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

JAMES EDWARD QUALLS,
DAVID L. SMITH,

Petitioners,

v.

REGIONAL TRANSPORTATION DISTRICT, RICHARD BAUMAN, ROBERT GARSIDE, RICHARD REYNOLDS, ELLSWORTH WALKER, JAMES MISEK,

Respondents.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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ATTORNEY FOR PETITIONERS

INDEX

Order Issued by a Three-Judge Hearing Panel of the United States Court of Appeals for the Tenth Circuit on September 14, 1994 ii

Order Issued by the United States Court of Appeals for the Tenth Circuit on October 17, 1994 vi

Order Issued by a Three-Judge Hearing Panel of the United States Court of Appeals for the Tenth Circuit on January 5, 1995 viii

No. 94-1127

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JAMES EDWARD QUALLS,

Plaintiff-Appellant,

v.

REGIONAL TRANSPORTATION DISTRICT, RICHARD BAUMAN, ROBERT GARSIDE, RICHARD REYNOLDS, ELLSWORTH WALKER, JAMES MISEK,

Defendants-Appellees.

ORDER ISSUED BY A THREE-JUDGE HEARING PANEL OF THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT ON SEPTEMBER 14, 1994

This appeal is jurisdictionally defective because the order being appealed is not final. See 28 U.S.C. § 1291.

This is an appeal from an order of the district court staying the

proceedings below until the status of plaintiff's counsel's right to practice before the district court is clarified.

A final decision is a decision that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Catlin v. United States, 324 U.S. 229, 233 (1945). "A stay is not ordinarily a final decision for purposes of § 1291, since most stays do not put the plaintiff 'effectively out of court.'" Moses H. Cone Memorial Hosp. v. Mercury Construction Corp., 460 U.S. 1, 10 n. 11 (1983); see also Pioneer Properties, Inc. v. Martin, 776 F.2d 888, 890-891 (10th Cir. 1985).

The appellant appears to argue that the order is an injunction, and thus appealable under 28 U.S.C. § 1292(a)(1). This argument is without merit. See Gulfstream Aerospace Corp. v. Mayacamas

Corp., 485 U.S. 271, 279 (1988)("An order by a federal court that relates only to the conduct or progress of litigation before that court ordinarily is not considered an injunction and therefore is not appealable under § 1292(a)(1)"). See also Hamilton v. Robertson, 854 F.2d 740, 741 (5th Cir. 1988). (There is "a clean distinction between injunctions prohibiting proceedings in other courts, which are appealable, and orders, whether or not styled 'injunctions,' that control proceedings only in the court that issues the order. The latter are not appealable[.]").

The appellee's Motion for Damages and Costs, and for Show Cause Order and Sanctions is referred to the disciplinary panel.

The appendix filed by the appellant is stricken. The record has been

transmitted by the district court. See 10th Cir. R. 10.2.2. ("In pro se appeals . . . the clerk of the district court shall transmit the record to the clerk of the court of appeals . . .").

The appellee's motion to file a supplemental appendix is denied without prejudice to being renewed before the disciplinary panel.

APPEAL DISMISSED.

Entered for the Court
PATRICK FISHER
Chief Deputy Clerk

By:
Ellen Rich Reiter
Deputy Clerk/Appeals Expediter

No. 94-1127

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JAMES EDWARD QUALLS,

Plaintiff-Appellant,

v.

REGIONAL TRANSPORTATION DISTRICT, RICHARD BAUMAN, ROBERT GARSIDE, RICHARD REYNOLDS, ELLSWORTH WALKER, JAMES MISEK,

Defendants-Appellees.

ORDER ISSUED BY THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT ON OCTOBER 17, 1994

Due to clerical error the order issued October 11, 1994, is reissued as follows:

This matter comes on for consideration of appellant's petition for rehearing and suggestion for rehearing en banc.

Upon consideration whereof, the petition for rehearing is denied by the panel that rendered the decision.

In accordance with Rule 35(b), Federal Rules of Appellate Procedure, the suggestion for rehearing in banc was transmitted to all of the judges of the court who are in regular active service. No member of the panel and no judge in regular active service on the court having requested that the court be polled on rehearing in banc, Rule 35, Federal Rules of Appellate Procedure, the suggestion for rehearing in banc is denied.

Entered for the Court

PATRICK FISHER, Chief Deputy Clerk

By:
Audrey F. Weigel
Deputy Clerk

No. 94-1314

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JAMES EDWARD QUALLS,

Plaintiff-Appellant,

and

DAVID L. SMITH,

Attorney-Appellant,

v.

REGIONAL TRANSPORTATION DISTRICT, RICHARD BAUMAN, ROBERT GARSIDE, RICHARD REYNOLDS, ELLSWORTH WALKER, JAMES MISEK,

Defendants-Appellees.

ORDER ISSUED BY A HEARING PANEL OF THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT ON JANUARY 5, 1995

This matter comes on for consideration of the parties' responses to this court's notice of jurisdictional defect.

If this notice of appeal is treated as such, then this appeal would be dismissable for lack of jurisdiction.

However, we elect to treat the notice of appeal as a petition for writ of mandamus. We take judicial notice of the fact that on October 11, 1994 the district court entered an order lifting the stay and setting the case for trial for October 28, 1995.

Accordingly, the petition is DENIED.

The appellee's motion for leave to supplement the appendix is denied.

The appellant's request for sanctions against the appellant is denied.

The appellee's request for sanctions is referred to the disciplinary panel.

Entered for the Court
PATRICK FISHER, Clerk

By:
Ellen Rich Reiter
Deputy Clerk/Appeals Expediter